

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, DC

DIRECTOR, OFFICE OF PROFESSIONAL
RESPONSIBILITY,

Complainant,

v.

Complaint No. 2007-10

RICHARD S. OHENDALSKI,

Respondent.

DECISION BY DEFAULT

This case was originally assigned to Judge Joseph Gontram, who, unfortunately, passed away on July 17, 2007. The case is hereby reassigned to me.

On February 13, 2007, the Director, Office of Professional Responsibility, Internal Revenue Service, Department of the Treasury issued a complaint alleging that the Respondent, a certified public accountant who practices before the Internal Revenue Service, engaged in disreputable conduct within the meaning of 31 C.F.R. 10.51. The complaint seeks to have the Respondent suspended from such practice for a period of twenty four (24) months pursuant to 31 C.F.R. 10.50 because of his willful failure to file personal income tax returns for the years 2002 through 2005.

Also on February 13, 2007, copies of the Complaint and an attached cover letter were sent to the Respondent by certified mail, return receipt requested, at his last known address of record with the Internal Revenue Service. The Complaint was delivered to Respondent on February 16, 2007. The Complaint advised the Respondent of his obligation to file an answer to the Complaint within thirty (30) calendar days from service of the Complaint. Respondent was also advised that failure to answer the Complaint could result in a decision by default being rendered against him.

On May 18, 2007, Complainant filed a motion for a Decision by Default stating that the Respondent had, on April 9, 2007, submitted to the Complainant a document entitled "Notice of Fraudulent Complaint; Notice of Lack of Jurisdiction; Requirement for More Definite Statement; Motion to Dismiss Complaint," which the Complainant asserted did not constitute an answer to the Complaint. On June 27, 2007, Judge Gontram issued an order denying the motions included in Respondent's submission, which he had also received separately, and offered Respondent another fifteen (15) days within which to file an answer to the Complainant's motion for Decision by Default. No further response has been received from Respondent.

The Respondent's submission set forth above does not affirmatively admit or deny any of the aspects of the Complaint. It does not therefore constitute an answer. See 31 C.F.R. 10.64. Since no further response was submitted after Judge Gontram's June 27, 2007 order, the Complainant, on August 1, 2007, filed a motion to reinstate its Motion for Decision by

Default, with an appropriate certificate of service on Respondent. No answer has been received to that motion.

Ruling on Motion for Default Judgment

As indicated above, no answer has been filed to the Complaint. Pursuant to the provisions of 31 C.F.R. 10.64(d), failure to file a timely answer constitutes a waiver of hearing. Thus, the allegations of the Complaint are deemed to be admitted, and they may be considered as proved without further evidence. Inasmuch as the allegations in the Complaint have been admitted and no hearing or further proceeding is necessary, based on the record herein, I make the following:

Findings of Fact

1. At all times material, the Respondent was a certified public accountant engaged in practice before the Internal Revenue Service and was subject to the disciplinary authority of the Secretary of the Treasury and the Director, Office of Professional Responsibility, Internal Revenue Service.
2. Respondent willfully failed to timely file individual federal income tax returns for the tax years 2002, 2003, 2004 and 2005. Such actions constitute disreputable conduct, as alleged in the Complaint.

Conclusions of Law

1. The Respondent's eligibility to practice before the Internal Revenue Service is subject to suspension or disbarment by reason of disreputable conduct.
2. The Respondent's repeated failure to timely file required federal tax returns constitutes disreputable conduct within the meaning of 31 C.F.R. 10.51. The Respondent's disreputable conduct warrants his suspension from such practice. There is no record evidence of extenuating or mitigating circumstances. Accordingly, a suspension of twenty four (24) months, the penalty sought by the Director, is reasonable.

Upon the foregoing findings of fact and conclusions of law, and on the entire record, it is

ORDERED that Respondent, Richard S. Ohendalski, is suspended from practice before the Internal Revenue Service for a period of twenty four (24) months. Reinstatement to practice is at the sole discretion of the Office of Professional Responsibility. Requirements for reinstatement include, but are not limited to, the Respondent's having filed all federal tax returns and having paid all outstanding tax liabilities for which he is responsible, or having entered into and fully complied with an offer-in-compromise which has been accepted by the Internal Revenue Service.

Dated at Washington, D.C., August 10, 2007

Robert A. Giannasi
Administrative Law Judge

